

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 259 OF 1997

WITH

SPECIAL CIVIL APPLICATION NO. 7004 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

In Spl.C.A. No.259/97.

STATE OF GUJARAT

Versus

PREMJIBHAI DHANABHAI

In Spl.C.A. No.7004/96

SATVARA PREMJI DHANABHAI

Versus

COMPETENT AUTHORITY

(ULCO AND ANOTHER.

Appearance:-

In Spl.C.A. No.259/97.

MRS. V.K. PAREKH, A.G.P.instructed by

MR. D.A. BHAMBHANIA, for the petitioner.
MR. J.R. NANAVATI, for Respondent No. 1.
MTR. T.H. SOMPURA, for Respondent no.2.

In Spl.C.A. No.7004/96.

MR. J.R. NANAVATI, for the petitioner.
MRS. V.K. PAREKH, A.G.P. instructed by
MR. D.A. BHAMBHANIA, for respondents.

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 15/04/97

ORAL JUDGEMENT

Both these petitions are arising from the same order. Spl. C.A. No.259/97 is filed by the State of Gujarat, whereas another is filed by the landlord. Since these petitions are arising from the same order and the subject matter, are disposed by of this common judgment. (For the sake of convenience the parties are referred as described in Spl. C.A. No.259/97).

2. Brief facts giving rise to these petitions are that the respondent no.1 Premji Dana filled Form No.1 under Section 6(1) of the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the "Act") in connection with his holding of the land bearing Survey No.1118/1. The competent authority declared 1726.88 sq.m. as surplus land. Aggrieved by the order the impugned order of the competent authority the respondent no.1 preferred Appeal No.10/93 u/s 33 of the Act before the Urban Land Tribunal. The Tribunal allowed the appeal and set aside the order of the competent authority vide which the excess land was declared. Aggrieved by this order, the State of Gujarat has filed the present petition. As against that, after the order of the Tribunal the respondent no.1 applied for permission u/s 26 of the Act. At the first instance, it was granted for a part of the property and accordingly the land was also sold but at later stage when asked for rest of the land, the same was rejected vide the letter dated 3-9-1996. Aggrieved by the order of the competent authority refusing to grant permission u/s 26 of the Act without expressing/exercising option to purchase the land, the respondent no.1, the land holder has filed Sp.C.A. No.7004/96.

3. Learned Counsel Mr. Nanavati appearing for the respondent no.1 original holder objects to the grant of this petition relying upon the principle laid down in the case of State of M.P. and others Vs. Nandlal Jaiswal

and others, reported in AIR 1987 SC 251 and unreported judgment of this Court (Coram : S.D. Dave, J,) in Spl. C.A. No.1774/96 in the case of State of Gujarat Vs. Jivandas Sadu through heir Jayantilal Jivandas & Ors.

4. In the case of State of M.P. Vs. Nandlal (supra) the Supreme Court laid down two principles; (1) that power of the High Court to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and the High Court shall not exercise discretion to assist tardy, indolent or lethargic person filing petition after inordinate, unexplained delay. In such circumstances, exercise of discretionary power may cause inconvenience, injustice and hardships to even third parties. Secondly, if by virtue of the impugned orders some rights have already been created or accrued in favour of somebody, exercise of extra ordinary jurisdiction after delayed period may unsettle the settled matter hence the Court should refrain from exercise of discretion in extra ordinary jurisdiction. This Court also in the case of Jivandas Sadu (supra) relying on the Supreme Court judgment in the case of State of M.P. Vs. Nandlal (supra) has taken identical view.

5. In this case, admittedly it is not in dispute that the competent authority passed the order on 22-7-1993 and the Tribunal passed the order on 18-10-1993. The order dated 18-10-1993 is challenged in the year 1997 by presenting this petition on 13-1-1997. Undisputedly there is delay of about more than three years. The petitioner has not given any explanation much less satisfactorily explanation for such inordinate delay. This reflects upon indolent and lethargic approach of the petitioner - State. Therefore, as settled principle extra ordinary discretionary powers should not be exercised in favour of such petitioner.

6. In the affidavit-in-reply the respondent has stated that after the order of the Tribunal the land in question has already been divided into sub-plots by obtaining N.A. permission from the appropriate authority. After making sub-plots the respondent no.1 also applied to the competent authority to exercise option u/s 26 of the Act. As the competent authority declined to exercise option u/s 26 of the Act, some plots namely plot nos.1, 2, 3, 6, 15, 16 and 17 have been sold to the third parties. Thus, during the intervening period some rights have been created in favour of third parties and if the petition is accepted would cause great hardship, injustice and inconvenience not only to the

respondent no.1 but to the third parties for no fault. As the respondent no.1 has sold the property, some rights have been settled which shall never be unsettled while exercising extra ordinary jurisdiction unless there is a gross miscarriage of injustice.

7. Under these circumstances, interference by this Court in exercise of writ jurisdiction is not warranted. The circumstances referred to above are sufficient to disentitle the petitioner to the discretionary relief under Article 226 of the Constitution of India. Therefore, the petition deserves rejection.

8. The counter petition Spl.C.A. No.7004/96 filed by the respondent no.1 deserves acceptance for the simple reason that in the same circumstances on an earlier occasion the respondent did not exercise option u/s 26 of the Act and granted permission for sell of land to the third parties. Now, without change of circumstances the competent authority has refused to grant permission u/s 26 of the Act vide letter dated 3-9-1996 only on the ground that the Government has decided to challenge the impugned order passed by the Tribunal.

9. It is abundantly clear from the discussion made above that the approach of the competent authority is highly arbitrary because without any change in the circumstances, the authority has refused to exercise option contemplated u/s 26 of the Act. Secondly, it is not expected from the Government/Authority to make false statement that aggrieved by the impugned order of 18-10-1993 the writ petition has already been preferred and even subject having become subjudice the authority is not exercising option. As discussed above, in fact the competent authority has filed petition on 13-1-1997. In fact on 3-9-96 no such petition was filed hence the authority should not have reported that the State has already filed the writ petition in High Court. This false statement is made with a view to cause hardship and injustice to the petitioner in whose favour in identical set of facts the authority had refused to exercise option u/s 26 of the Act and permitted to sell to third party.

10. Looking to scope of Section 26 of the Act, whenever any person holding vacant land within the ceiling limit intends to transfer, sell, mortgage in any legal mode of conveyance, has to give notice to the competent authority and upon receipt of such notice the competent authority shall exercise option to purchase the said land on behalf of the Government at a price calculated in accordance with the provisions of the Land

Acquisition Act, 1984. So, only option available to the Government is either to exercise the option for purchase or not. But none the less the Authority can direct the landlord not to sell or transfer the land as per the recognised mode of conveyance specified in sub-section (1) of Section 26.

11. In this case, without exercising any option, the authority has rejected the request of the petitioner for transfer of land as per recognised mode of conveyance. On the face of it, the order dated 3-9-96 Annexure 'E' passed by the authority and conveyed to the respondent no.1 is de hors the provisions of Section 26 of the Act and is contrary to law hence deserves to be quashed and set aside. In the result following order is passed:-

Special Civil Application No.259/97 is dismissed. Notice is discharged. Order of Status-quo is vacated. Special Civil Application No.7004/96 is allowed. The impugned order dated 3-9-1996 annexure 'E' to the petition passed by the Competent Authority, Jamnagar, is quashed and set aside. The matter is remanded to the competent authority with a direction to dispose of the petitioner's application u/s 26 of the Act in accordance with law within two weeks from the date of receipt of writ. Rule is made absolute, accordingly, with no order as to costs.

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